

MIAMI BEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission

FROM: City Attorney Ricardo J. Dopico

DATE: September 11, 2024 First Reading

TITLE: AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 70 OF THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA, ENTITLED "MISCELLANEOUS OFFENSES," BY AMENDING ARTICLE I, ENTITLED "IN GENERAL," BY AMENDING SECTION 70-1 THEREOF, ENTITLED "STATE MISDEMEANORS," BY ADOPTING, THROUGH SPECIFIC REFERENCE, THE STATE LAW MISDEMEANOR OFFENSES OF TRESPASS IN STRUCTURE OR CONVEYANCE AND TRESPASS ON PROPERTY OTHER THAN A STRUCTURE OR CONVEYANCE, TO AFFIRMATIVELY ESTABLISH OFFENSES AGAINST MUNICIPAL LAW FOR THE SAME ACTS THAT CONSTITUTE SUCH OFFENSES AGAINST STATE LAW; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

RECOMMENDATION

BACKGROUND/HISTORY

ANALYSIS

The proposed Ordinance, sponsored by Vice Mayor Alex Fernandez, is submitted for consideration by the Mayor and City Commission.

The proposed Ordinance, sponsored by Vice Mayor Alex Fernandez, seeks to adopt, by specific reference, the state law misdemeanor offenses of trespassing in a structure or conveyance and trespassing on property other than a structure or conveyance. The Ordinance would affirmatively make the conduct underlying these crimes offenses against municipal law for the same acts that constitute such offenses against State law, and thereby permit the City's Municipal Prosecution Team to prosecute such criminal violations under City law.

On September 25, 2017, the Mayor and City Commission adopted Resolution No. 2017-30023, which authorized the City Attorney's Office to commence the in-house prosecution, by and through a City municipal prosecution team, of those individuals exclusively charged with violating the City's criminal ordinances. However, the Miami-Dade State Attorney's Office (the "Miami-Dade SAO") remained the prosecutorial entity responsible for the prosecution of persons arrested for the commission of all felony, misdemeanor, and/or County ordinance violations committed in Miami-Dade County.

Although statistical data reflects a downward trend in crime within the City largely due to the efforts of law enforcement and the successful municipal prosecution program, the City continues to contend with certain quality of life offenses being committed within its jurisdictional bounds. The commission of misdemeanor and municipal ordinance offenses in the City adversely impact

residents' quality of life and tourists' vacation experience, and continues to generate complaints from the City's residents, visitors, and business establishments.

Some of those misdemeanor offenses which most adversely affect the City's residents, visitors, and businesses include battery, indecent exposure, criminal mischief, and trespassing. In order to acquire greater control and discretion regarding the prosecution of certain misdemeanor offenses occurring within the City, and to relieve the Miami-Dade SAO of some of its prosecutorial burden, the City desires to become the primary entity responsible for the prosecution, as criminal municipal ordinance violations, of the same conduct that would otherwise constitute the State law criminal offenses of trespassing in a structure or conveyance and trespassing on property other than a structure or conveyance. Accordingly, on March 9, 2022, the Mayor and City Commission adopted Ordinance No. 2022-4477, which created specific offenses against municipal law for the same acts that constitute the State law misdemeanor offenses of battery (non-domestic), criminal mischief and exposure of sexual organs (indecent exposure).

Then, on October 26, 2022, the Mayor and City Commission adopted Ordinance No. 2022-4520, which created a specific offense against municipal law for the same act(s) that constitute the State law misdemeanor offense of breach of the peace / disorderly conduct.

Most recently, on February 10, 2024, the Mayor and City Commission adopted Ordinance No. 2024-4588 which created specific offenses against municipal law for the same acts that constitute the State law misdemeanor offenses of assault, loitering or prowling, and disorderly conduct on the premises of an establishment; and

The proposed Ordinance would create, through specific reference, offenses against municipal law for the same acts that constitute the State law misdemeanor offenses of trespassing in a structure or conveyance (Fla. Stat. 810.08) and trespassing on property other than a structure or conveyance (Fla. Stat. 810.09), respectively. Florida caselaw has established that a municipality may enact ordinances which create offenses against municipal law for the same acts that constitutes offenses against State law. Under Florida law, a municipality may, by ordinance, adopt State misdemeanor statutes by specific reference or by general reference, such as that contained in an ordinance making it unlawful to commit, within City limits, any act which is (or shall be) recognized by the laws of the State as a misdemeanor.

FISCAL IMPACT STATEMENT

N/A.

Does this Ordinance require a Business Impact Estimate? Yes
(FOR ORDINANCES ONLY)

If applicable, the Business Impact Estimate (BIE) was published on:
See BIE at: <https://www.miamibeachfl.gov/city-hall/city-clerk/meeting-notices/>

FINANCIAL INFORMATION

CONCLUSION

Applicable Area

Citywide

Is this a "Residents Right to Know" item, pursuant to City Code Section 2-17?

No

Is this item related to a G.O. Bond Project?

No

Was this Agenda Item initially requested by a lobbyist which, as defined in Code Sec. 2-481, includes a principal engaged in lobbying? No

If so, specify the name of lobbyist(s) and principal(s):

Department

City Attorney

Sponsor(s)

Commissioner Alex Fernandez

Co-sponsor(s)

Commissioner David Suarez
Commissioner Joseph Magazine

Condensed Title

1st Rdg, Ch. 70, Specifically Adopting State Law Trespass Misdemeanors.
(Fernandez/Suarez/Magazine) CA